IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 6TH SEPTEMBER 2007 / 15TH BHADRA 1929

Bail Appl..No. 5474 of 2007(M)

L.P.R.73/07 IN CP.53/2006 of J.M.F.C.,KUNNAMKULAM
CRIME NO.21/03 OF PERAMANGALAM POLICE STATION

.....

PETITIONER/ACCUSED NO.3

MURALI, 41 YEARS, S/O. KUTTAN,PARAPUATH HOUSE, MUNDOOR P.O., PUZHAMUKKU DESOM, THRISSUR DIST.

BY ADV. SRI.A.C.DEVY

RESPONDENTS:

STATE OF KERALA, REP. BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA, ERNAKULAM

BY P.P. SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 06/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 5474 OF 2007

Dated this the 6th day of September, 2007

ORDER

The petitioner faces indictment in a prosecution, inter alia, under Sec.308 read with Sec.149 of the IPC. The case is pending before the learned Judicial Magistrate of the First Class, Kunnamkulam.

2. The petitioner was not available for arrest at the crime stage, it is submitted. Final report was filed. Cognizance was taken. The petitioner figures as the 3rd accused. In the prosecution for the offence under Sec.308 of the IPC, he had entered appearance and was enlarged on bail at the crime stage. But subsequently, after taking cognizance, the petitioner did not appear before the learned Magistrate and consequently the learned Magistrate has issued coercive processes against the petitioner to procure his presence. The case against him has been transferred to the list of Long

Pending Cases also.

3. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. His absence was not wilful or deliberate. He had no knowledge of the pendency of the proceedings. The petitioner is willing to surrender before the learned Magistrate and seek regular bail. The petitioner apprehends that his application for regular bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. He therefore prays that directions under Sec.438 and/or Sec.482 of the Cr.P.C. may be issued in favour of the petitioner.

4. This application is opposed by the learned Public Prosecutor. The learned Public Prosecutor submits that the petitioner may be directed to appear before the learned Magistrate and seek regular bail.

5. After the decision in **Bharat Chaudhary and another v. State of Bihar (**AIR 2003 SC 4662), it is by now trite that powers under Sec.438 of the Cr.P.C. can be invoked in favour of a person who apprehends arrest in execution of a non-bailable warrant issued by a court in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist. I am not persuaded, in the facts and circumstances of this

case, that any such reasons exist.

6. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the petitioner's application for regular bail on merits in accordance with law and expeditiously. No special or specific directions appear to be necessary. Every court must do the same. Sufficient general directions on this aspect have already been issued in the decision reported in **Alice George v. Deputy Superintendent of Police** (2003 (1) KLT 339).

7. In the result, this application is dismissed; but with the observation that if the petitioner surrenders before the learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously – on the date of surrender itself.

Sd/-

(R. BASANT, JUDGE)

Nan/

//true copy// P.S. to Judge

(R. BASANT, JUDGE)

Nan/